

Remarks

I. Support for Amendments

By the foregoing amendments, claims 1, 35, 118, 123, 124, 130, 131 and 139 are sought to be amended. The amendment to claim 1 is sought to incorporate claims 30, 33 and 42 into claim 1. The amendments to claims 35, 123, 124, 130, 131 and 139 are sought to revise the dependency of these claims. The amendment to claim 118 is sought to correct a grammatical error.

New claims 147-161 are sought to be added. New claims 147, 148, 150, 152, 153, 154, 159, 160 and 161 are supported by the originally filed claims and specification including, *inter alia*, page 27, lines 3-9 of the present specification (published as WO 2004/084939). New claims 149 and 151 are supported by the originally filed claims and specification including, *inter alia*, page 42, lines 6-10 of the present specification. New claims 155, 156 and 158 are supported by the originally filed claims and specification including, *inter alia*, page 28, lines 31-33 of the present specification. New claim 157 is supported by the originally filed claims and specification including, *inter alia*, original claims 12 and 17.

Applicants respectfully submit that these amendments place the application in condition for allowance and do not raise any new issue requiring further search or examination. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

II. Status of the Claims

By the foregoing amendments, claims 27, 30, 33, 42, 116, 117, 121, 128, 132, 137, 138 and 140-143 have been cancelled without prejudice to or disclaimer of the subject matter therein. Claims 4, 6, 7, 9-11, 113, 127 and 129 have been withdrawn by the Examiner. Claims 1, 35, 118, 123, 124, 130, 131 and 139 have been amended. New claims 147-161 have been added. As discussed above, these amendments add no new matter to the present application. Upon entry of these amendments, claims 1, 2, 4, 6-12, 14, 15, 17, 19, 21, 24, 25, 35, 48, 113, 115, 118-120, 122-127, 129-131, 133-136, 139 and 144-161 are pending in the application, with claim 1 being the sole independent claim.

III. Withdrawn Claims

Claims 4, 6, 7, 9-11, 113, 127 and 129 have been withdrawn by the Examiner as allegedly not reading on an elected species. Applicants would like to remind the Examiner that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 C.F.R. § 1.141. Applicants believe that that the currently pending claims are in condition for allowance, and therefore request the rejoinder and examination of withdrawn claims 4, 6, 7, 9-11, 113, 127 and 129.

IV. Rejections Under 35 U.S.C. §103(a)

A. The Rejection Under 35 U.S.C. § 103(a) Over Kozlovskaja, Krieg and Stoll

In the Office Action at pages 3-5, the Examiner rejected claims 1, 2, 8, 12, 14, 15, 17, 21, 24, 25, 27, 30, 33, 48, 115, 116, 118, 120, 121, 125, 126, 128, 130, 132, 136-138, 141 and 144 under 35 U.S.C. § 103(a) as being unpatentable over Kozlovskaja *et al.* (*Intervirology*, 1996, 39:9-15) (hereinafter "Kozlovskaja"), Krieg *et al.* (U.S. Patent Appl. No. 2003/0050263) (hereinafter "Krieg") and Stoll *et al.* (*The Journal of Biological Chemistry*, 1977, 252(3): 990-993) (hereinafter "Stoll"). Applicants respectfully traverse this rejection.

However, solely to advance prosecution, and not in acquiescence to the rejection, independent claim 1 is sought to be amended to incorporate the elements of previously presented claims 30, 33 and 42. The remaining claims included in this rejection depend directly or ultimately from claim 1. In the present Office Action, the Examiner did not reject claim 42 under 35 U.S.C. § 103(a). Claim 42 depends from claim 33, which depends from claim 30, which depends from claim 1. Hence, by incorporating the elements of previous claims 30, 33 and 42 into claim 1, Applicants believe that claim 1 is allowable over the cited art. Likewise, because the remaining claims included in this rejection depend directly or ultimately from claim 1, Applicants believe that these claims as currently presented are allowable over the cited art. As such, Applicants respectfully believe that the rejection that is based on the combination of Kozlovskaja, Krieg and Stoll has been overcome, and request that the Examiner reconsider and withdraw the rejection.

B. The Rejection Under 35 U.S.C. § 103(a) Over Renner and Krieg

In the Office Action at pages 5-7, the Examiner rejected claims 1, 2, 8, 12, 14, 15, 17, 21, 24, 25, 27, 30, 33, 48, 115, 116, 118, 120, 121, 125, 126, 128, 130, 132, 136-138, 141 and 144 under 35 U.S.C. § 103(a) as being unpatentable over Renner *et al.* (WO 02/056905) (hereinafter "Renner's '905 application") and Krieg *et al.* (U.S. Patent Appl. No. 2003/0050263) (hereinafter "Krieg"). Applicants respectfully traverse this rejection.

However, solely to advance prosecution, and not in acquiescence to the rejection, independent claim 1 is sought to be amended to incorporate the elements of previously presented claims 30, 33 and 42. The remaining claims included in this rejection depend directly or ultimately from claim 1. In the present Office Action, the Examiner did not reject claim 42 under 35 U.S.C. § 103(a). Claim 42 depends from claim 33, which depends from claim 30, which depends from claim 1. Hence, by incorporating the elements of previous claims 30, 33 and 42 into claim 1, Applicants believe that claim 1 is allowable over the cited art. Likewise, because the remaining claims included in this rejection depend directly or ultimately from claim 1, Applicants believe that these claims as currently presented are allowable over the cited art. As such, Applicants respectfully believe that the rejection that is based on the combination of Renner's '905 application and Krieg has been overcome, and request that the Examiner reconsider and withdraw the rejection.

C. The Rejection Under 35 U.S.C. § 103(a) Over Renner and Krieg

In the Office Action at pages 7-9, the Examiner rejected claims 1, 2, 8, 12, 14, 15, 17, 21, 24, 25, 27, 30, 33, 48, 115, 116, 118, 120, 121, 125, 126, 128, 130, 132, 136-138,

141 and 144 under 35 U.S.C. § 103(a) as being unpatentable over Renner *et al.* (WO 02/056907) (hereinafter "Renner's '907 application") and Krieg *et al.* (U.S. Patent Appl. No. 2003/0050263) (hereinafter "Krieg"). Applicants respectfully traverse this rejection.

However, solely to advance prosecution, and not in acquiescence to the rejection, independent claim 1 is sought to be amended to incorporate the elements of previously presented claims 30, 33 and 42. The remaining claims included in this rejection depend directly or ultimately from claim 1. In the present Office Action, the Examiner did not reject claim 42 under 35 U.S.C. § 103(a). Claim 42 depends from claim 33, which depends from claim 30, which depends from claim 1. Hence, by incorporating the elements of previous claims 30, 33 and 42 into claim 1, Applicants believe that claim 1 is allowable over the cited art. Likewise, because the remaining claims included in this rejection depend directly or ultimately from claim 1, Applicants believe that these claims as currently presented are allowable over the cited art. As such, Applicants respectfully believe that the rejection that is based on the combination of Renner's '907 application and Krieg has been overcome, and request that the Examiner reconsider and withdraw the rejection.

V. Obviousness-Type Double Patenting

At pages 9-10, claims 1, 2, 8, 21, 24, 25, 27, 30, 33, 35, 42, 48, 117, 122, 123, 124, 129, 131, 133-135, 139, 140, 142, 143, 145 and 146 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1, 10, 14-16, 41, 48 and 55 of copending application 10/563,944 ("the 944 application").

Applicants would like to draw the Examiner's attention to MPEP § 1490.V.D.

which states that:

If two (or more) pending applications are filed, in *each* of which a rejection of one claimed invention over the other on the ground of provisional obvious-type double patenting (ODP) is proper, the ODP rejection will be made in each application. If the ODP rejection is the only rejection remaining in the earlier filed application of the two pending applications, (but the later-filed application is rejectable on other grounds), the examiner should then withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

The priority date of the '944 reference application used in making this obviousness-type double patenting rejection is July 10, 2003, i.e., about four months *after* the priority date of the present application. Applicants believe that the amendments and arguments presented herein will place the present application in condition for allowance except for the obviousness-type double patenting rejection. Thus, Applicants request that the Examiner hold this rejection in abeyance until the arguments and amendments herewith have been considered, and that the Examiner reconsider and withdraw this rejection upon finding the present claims otherwise allowable in accordance with MPEP § 1490.V.D.

VI. Objections

At page 10, claim 19 is objected to as being dependent upon a rejected base claim (i.e., claim 1). Applicants have amended claim 1 to incorporate claims 30, 33 and 42 and believe claim 1 as currently presented is allowable over the cited art. Thus, Applicants respectfully request that the Examiner's objection to claim 19 be withdrawn.

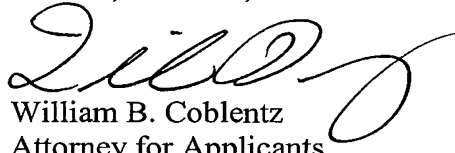
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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